

1           A.       I have not. We have collected lien  
2 releases from subcontractors.

3           Q.       You have or have not collected them?

4           A.       We have -- we have started collected lien  
5 releases from subcontractors.

6           Q.       Okay. Are you aware of any liens filed  
7 on this particular project?

8           A.       No.

9           Q.       Okay. Has the contractor provided the  
10 owner with all written manufacturer warranties?

11          A.       That is in process.

12          Q.       All right. And do you know, has the  
13 owner received total payments for depreciation held  
14 by the insurance company?

15          A.       I do not know.

16          Q.       Okay. Is that something the owner has  
17 been keeping you advised of?

18          A.       Sometimes, I -- not really exactly. I  
19 don't think so. He's -- again, he is right  
20 across -- his office is right across from where I'm  
21 working at, so we talk quite a bit.

22          Q.       Okay. Do you know the status of  
23 insurance payments at this point?

24          A.       I believe in review, yes.

25          Q.       I'm sorry. Did you say in review?

1           A.       Yes. In review. Whenever I have seen  
2 them, I've reviewed them.

3           Q.       Okay. So the owner has kept you apprised  
4 of when insurance monies come in?

5           A.       Yes.

6           Q.       And then Section 3.4 allows the  
7 contractor to apply interest on any late payments,  
8 correct?

9           A.       Correct.

10          Q.       All right. Let's look down at Section 7,  
11 which is on page 3. And for the record, this is  
12 Encore Bates number 55.03. This is time of  
13 performance. It says under Section 7.1.

14                   Contractor will proceed with the work in  
15 a prompt and diligent manner in accordance with the  
16 agreed-upon schedule as reasonably amended from time  
17 to time. Commencement occurred on November 24,  
18 2020.

19                   I'm going to stop right there for just a  
20 minute. So per this contract, you had already been  
21 given notice to proceed by the owner on November  
22 24 -- November 24, correct?

23          A.       I don't know the exact date. That's what  
24 it says on here. But, yeah, probably around that  
25 time.

1 Q. Okay. And that was a few days after  
2 Encore became licensed in the State of Louisiana,  
3 right?

4 A. Yes.

5 Q. So does that make sense, you got your  
6 license, and then the owner said, okay, go ahead and  
7 start?

8 A. Yes.

9 Q. And in fact, if you look at a calendar of  
10 when November 19 is and when November 24 is, I  
11 believe that's about two business days. Do you have  
12 a recollection of it being that quickly after you  
13 got your license that the owner gave the go-ahead to  
14 do the work?

15 A. I can't remember.

16 Q. Okay. It says on here in accordance with  
17 the agreed-upon schedule. Was there a schedule that  
18 you had prepared at this point showing all of the  
19 items, the critical path, and your completion dates?

20 A. Yes. There were rough schedules that  
21 were provided mostly having to do with the first  
22 floor items. Some second floor items, but most of  
23 the finishes and everything was more specified for  
24 that first floor.

25 Q. Okay. And unfortunately the sound wasn't

1 very good in your answer.

2 A. I apologize.

3 Q. I don't think it was anything you did.  
4 So I'm going to have to ask you to repeat. And so  
5 let me just break this down. Was there a physical  
6 schedule that -- at this point in time when you  
7 entered into this contract, was there a physical  
8 schedule that you had prepared showing the tasks,  
9 the critical path, and the planned completion dates?

10 A. Yes.

11 Q. Yes. And is that a document that you  
12 have produced?

13 A. Yes.

14 Q. And you have actually, in fact, given us,  
15 as we requested, your native files for your  
16 schedule, right?

17 A. Yes, ma'am.

18 Q. And it says in the contract, as  
19 reasonably amended from time to time, correct?

20 A. Correct.

21 Q. All right. So there were some -- did you  
22 have at this point when you initially prepared the  
23 schedule, a lot of unknowns about subcontractors'  
24 ability to do the work, labor shortages, material  
25 shortages, delay times in getting materials to the

1 site? Were all of those variables unknowns that you  
2 couldn't really predict the exact completion dates?

3 A. No. I had -- we had good numbers for  
4 quite a few of our trades. And I think the one  
5 thing that I was worried about was the carpet tiles  
6 and flooring was one thing that I was worried about.  
7 But everything else, I did have backups that I could  
8 go to, if I did not have them, that have secured  
9 timeframes for me. So with pretty much every trade.  
10 So I mean, there was -- I had full confidence of the  
11 schedule.

12 Q. Okay. So let's look at -- the first  
13 floor was to be completed in 66 days of  
14 commencement. Is that 66 calendar days?

15 A. Working days.

16 Q. 66 working days?

17 A. I would think working days, yeah, 13, 12  
18 weeks.

19 Q. Okay. So the 66 days is working days,  
20 and that is Monday through Friday, right?

21 A. Again it could be -- it just says 66  
22 days. I'm not sure exactly the intent of  
23 identifying that, if it's seven days a week, five  
24 days a week.

25 Q. Okay. Well I did see something in the

1 proposal that says you're not going to -- you know,  
2 the assumption is you're going to be working Monday  
3 through Friday.

4 A. Right.

5 Q. And not on -- well, I don't think it says  
6 anything about holidays. I'm looking back at  
7 Exhibit A Encore 57.02, the contract sum in this  
8 construction agreement is based on normal working  
9 hours of 7:00 a.m. to 3:30 p.m. Monday through  
10 Friday.

11 A. Yes.

12 Q. This estimate specifically excludes any  
13 shiftwork and other premium time, right?

14 A. Correct.

15 Q. You would not have included any of that  
16 in your -- you were assuming Monday through Friday  
17 business days, not holidays, and not overtime, in  
18 this schedule, right?

19 A. Not necessarily. But, yeah.

20 Q. Okay.

21 A. Guys that works Fridays and Saturdays and  
22 Sundays, you know, if they want to work, they can  
23 work. So I don't deter that at all.

24 Q. Okay. And then do you know in your  
25 schedule, because I don't have it pulled up right

1 now, but in your schedule for first floor, did you  
2 show the anticipated completion date to be 66  
3 calendar days, or 66 work days?

4 A. I don't remember. The schedule has  
5 variations of times that I would be changing items  
6 in it. So I can't remember that, any specific.

7 Q. Okay. But we can certainly just look at  
8 it and see if it was -- which days it was, right?

9 A. Yes. I changed -- there are things on  
10 there I changed that -- to Associated  
11 Waterproofing's schedule, which was six days a  
12 week-ish. And so -- but, I mean, everybody else I  
13 could not -- I don't exactly remember what I would  
14 do on that schedule.

15 Q. Okay. And then the second floor and all  
16 exterior work shall be completed by February 28,  
17 2021, right?

18 A. Correct.

19 Q. That's what you had estimated. But  
20 you've already talked about things on the second  
21 floor and the problems with the exterior that  
22 obviously pushed that date back, correct?

23 A. That's not necessarily what pushed those  
24 date back.

25 Q. Okay. When we get to the -- I think the

1 best time to talk about what pushed it back would be  
2 when we review your schedules. So we'll look at  
3 that. And -- well, my question is --

4 A. The schedules are as it related to the  
5 job.

6 Q. What's that?

7 A. The schedules are related to the job.  
8 Delays don't necessarily -- are job -- or may not be  
9 job related for me.

10 Q. Okay. Well we're going to get into that  
11 when we look at your meeting agendas and your  
12 schedules. Because I want to walk through it --

13 A. Okay.

14 Q. -- and talk about it then.

15 So at this point, you had prepared a  
16 physical schedule. What scheduling program did you  
17 use?

18 A. Microsoft Projects, I believe it is.

19 Q. I heard Microsoft. What else did you  
20 say?

21 A. Microsoft Projects.

22 Q. Projects, okay. And did you -- whenever  
23 there was an impact to the schedule, whether it be  
24 from COVID, or extra rain delays, or weather, or  
25 material shortages, or backlogs, did you update that



1 schedule with all of those impacts?

2 A. I had to redo the schedule multiple  
3 times.

4 Q. What's that?

5 A. I had to redo the schedule multiple  
6 times.

7 Q. Okay. And so did -- for example, did you  
8 on a monthly basis update the schedule, the critical  
9 path, and your anticipated completion date, and give  
10 that to the owner?

11 A. I never handed anything to the owner  
12 after the first schedules.

13 Q. Okay.

14 A. I don't even know if he even saw that  
15 third one.

16 Q. So you mentioned first three schedules,  
17 and we'll look at those. And you gave at least the  
18 first two to Joey Odom, right?

19 A. Yeah, I think so.

20 Q. And that was before -- well I'll ask you  
21 when we get there about the timeframe for those.  
22 And then once you had the contract in place, and you  
23 were performing the work, did you periodically  
24 update the schedule with any impacts and delays?

25 A. Yes.

1 Q. Okay. And so that's part of the purpose  
2 of the schedule is for you to show what your  
3 anticipated completion date is, right?

4 A. Yes.

5 Q. And you did not share those with the  
6 owner?

7 A. I did not.

8 Q. Did you share them with anybody?

9 A. No.

10 Q. What was the purpose of updating the  
11 schedule?

12 A. There was an experiment with the  
13 different paths that we were having to take.

14 Q. Did you say an experiment with the  
15 different paths --

16 A. Yeah, with the different path that we had  
17 to take, laying out different schedules because we  
18 were having to deviate from path A to go to path B.

19 Q. Okay. And what was the reason for the  
20 deviation to Path B? Are we talking --

21 COURT REPORTER: I'm sorry. I didn't  
22 hear the answer for the deviation to  
23 Path B?

24 A. Yes. Funding.

25 BY MS. WOLF:

1 Q. And so Path A is what? Explain what  
2 Path A is?

3 A. Appropriate funding and meeting a target  
4 date for completion. That's Path A. That's what we  
5 do.

6 Q. Okay. So is that --

7 A. It's rarely that we come into a job where  
8 we don't meet the critical Path A deadline. It's  
9 what we do. The times that we get off of that  
10 critical path is usually unassociated through the  
11 job, and it's more about funding, COVID, things like  
12 that.

13 Q. Let me ask you about Path A. Is Path A  
14 what's represented in your contract that you signed  
15 with the owner --

16 A. Yes.

17 Q. -- November 20?

18 Is Path A what you had in mind when you  
19 entered into this contract?

20 A. Yes.

21 Q. Okay. And so this scope of work that's  
22 associated with this contract, that remained the  
23 scope of work right; did it change?

24 A. At times moving things around quite a  
25 bit, but the price stayed the same. The scope of

1 work is more -- it's a budget. It's an estimated  
2 budget. So I would move things around to  
3 accommodate numbers if I need to get somebody there  
4 that to -- say that I would get rid of a contractor  
5 and I need to bring somebody else in, they're more  
6 expensive, again, I would move money around. If I  
7 need to add people, I move money around.

8 And that's -- none of that is on Path A,  
9 that's all Path B. So right when we started  
10 deviating from Path A, it was essentially a scramble  
11 for workers, for -- to kind of balance -- get a  
12 balanced budget to go, and to continue to see  
13 progress.

14 Q. What date was the shift from Path A to  
15 Path B?

16 A. I don't have a specific date. It was a  
17 feeling that we were getting -- that funding  
18 wouldn't be available.

19 Q. Hold on. I want to just make sure that  
20 we break this down. So what I'm trying to do is,  
21 you said there was a point in time when you shifted  
22 from Path A to Path B. You do not know a date when  
23 that was?

24 A. I would say it was after, I think,  
25 January 8. I remember that date because we -- I

1 think we were done drying in the building at that  
2 point. And that's whenever I called and the -- I  
3 was trying to get the insulation guys to show up on  
4 that. And typically in these scenarios you like to  
5 kind of start to set up things a little bit earlier.

6 A lot of subcontractors, a lot of  
7 tradesmen, a lot of companies, they do start to  
8 accept more work than they can take on. So if you  
9 are ahead of the game, if you're there, you're  
10 getting people started ahead. You don't have to  
11 deal with them being overwhelmed with work. And so  
12 I am always scared of that happening. And  
13 ultimately it's what happened.

14 They were -- they had availability at  
15 certain points. And I started to get that -- the  
16 stalling. And that's whenever I had to make a tick  
17 to deviate. It didn't pull us off of Path A fully,  
18 but we were able to make up a couple of days by  
19 working on a Sunday. And then the following week  
20 whenever they started, we had drywall delivered. I  
21 think it was the following week.

22 Then that's whenever still we were on  
23 that critical path, but I was not -- I was getting  
24 the feelings that -- from the subcontractors from  
25 tapers that they were not going to be there every

1 single day. That they had a lot of jobs going on at  
2 that time. And also by my standpoint I was having a  
3 conversation with Joey about funding.

4 Q. Mr. Monheiser, can you hear me?

5 A. Yes, ma'am.

6 Q. Sorry about that. I don't mean to cut  
7 you off, but that was a bit of a long answer. And I  
8 did get lost a little bit in some of it. So when  
9 that happens, I like to --

10 A. Okay. I'm sorry.

11 Q. -- questions. So you said this deviation  
12 from Path A to Path B happened at around January 8,  
13 2021?

14 A. Yes.

15 Q. So let me go back just for a minute and  
16 make sure that we're clear. That Encore could not  
17 enter into a contract, couldn't do any work or enter  
18 into contract, until after it became licensed on  
19 November 19, 2020, correct?

20 A. Correct.

21 Q. All right. So no insurance funding, no  
22 questions about insurance funding had anything to do  
23 with that, because pure and simple, it was not legal  
24 for Encore to even bid the job --

25 A. Correct.

1 Q. -- until it had a contract?

2 A. Correct.

3 Q. And your contract says start on  
4 November 24, which is pretty close to November 19.  
5 So there's no delay related to insurance as far as  
6 entering into this contract and starting work; is  
7 that right?

8 A. No. Can you repeat the question?

9 Q. The impediment to signing this contract  
10 and starting the work was Encore getting a license,  
11 right? You had to be licensed to enter into --

12 A. Right. Yeah, I mean, that's a precursor  
13 to it, correct.

14 Q. Right. So as of the time you entered  
15 into this contract, you got the go-ahead to start on  
16 November 24. And, in fact, you did, you started the  
17 work on November 24, right?

18 A. Yes, small items right, being small  
19 items.

20 Q. Actually you have your daily logs and you  
21 have your at least monthly, I think they might even  
22 be weekly, agenda meetings. And you have produced  
23 all of that. So we'll go through those. Is it a  
24 correct statement for me to say that your daily logs  
25 and your meeting minutes and agenda minutes that you

1 kept with the owner, those are accurate?

2 A. Those weren't for the owner. I guess  
3 those were for GSA's updates.

4 Q. Okay. And that's a fair statement  
5 because I actually lumped two things together.  
6 Let's break this up.

7 What was the purpose of the daily logs  
8 that were kept?

9 A. Those are my personal notes.

10 Q. Okay. Did you share those with anybody?

11 A. No.

12 Q. And they were your daily notes for what?  
13 What are you trying to document in the daily logs?

14 A. If something happens to me, somebody can  
15 step in.

16 Q. Okay. They see what -- on a day-to-day  
17 basis what's been going on --

18 A. Yeah. Kind of what's -- a generalization  
19 of what's going on, yes.

20 Q. Okay. So you have no reason to think  
21 that anything that you wrote in the daily logs, if  
22 it's written there about a delay, a rain delay, a  
23 backlog in materials, or any of that kind of stuff,  
24 that -- you intended that information to be  
25 accurate? You didn't intentionally put anything in



1 there that was wrong; is that right?

2 A. No, I don't think so.

3 Q. The information in the daily logs?

4 A. Yeah. There's no reason for me to put  
5 anything in there that's wrong.

6 Q. Okay. And then the documents I'm talking  
7 about or that we'll go through -- let me get the  
8 exact name of what you called them. Okay. They  
9 were called schedule of events and updates. They  
10 had your letterhead on them, and they were more than  
11 monthly, maybe even weekly. And the attendees were  
12 you, Joey Odom, and usually five or six people from  
13 DHS. Do you know which documents I'm talking about?

14 A. Yes.

15 Q. And were those documents that you kept,  
16 the schedule of events and updates, those were  
17 actually submitted to DHS and to the owner, correct?

18 A. Yes.

19 Q. All right. And the information that's  
20 contained in there is accurate? You were keeping an  
21 accurate log, and informing the government tenant of  
22 informa... -- of what was going on on the project?

23 A. Somewhat. I would like to state that I  
24 was hedging for the client in some of these items.

25 Q. And what does that mean?

1           A.       I was continuously -- I was in, I guess  
2 you could say I was in contact with DHS on a weekly  
3 basis on -- I don't remember the calls that we had,  
4 I think they were on Tuesdays or Thursdays. But I  
5 was hedging for the client to ease the relationship  
6 between the client and DHS or GSA. And so, yes, I  
7 was hedging for the client. Because there was --  
8 there was a contract for -- that I was aware that  
9 was for a new -- a renewal of that first floor -- a  
10 long-term contract renewal that was coming up.

11          Q.       Were you aware that the owner, Joey Odom,  
12 had told DHS -- had promised them that he was going  
13 to rebuild the building?

14          A.       That doesn't make sense.

15          Q.       You are not aware of Joey Odom telling  
16 the first floor tenant that he was going to rebuild  
17 the building?

18          A.       No, not at all. That doesn't make sense.  
19 I don't know why anybody would even say that. That  
20 doesn't make sense. But I never heard anything like  
21 that.

22          Q.       The owner did enter into a contract with  
23 Encore to rebuild the building, right?

24          A.       Again that's a -- it's a general term.  
25 Rebuild the building from what?

1 Q. From prior to the Hurricane Laura  
2 damaging the building.

3 A. Yeah, to put the building back together.

4 Q. Right. That's the work --

5 A. Yes.

6 Q. -- that Encore did, right?

7 A. Yeah. Rebuild the building for me is  
8 knocking it down and building it back up. Putting  
9 things back together is --

10 Q. Restoration would be a better term?

11 A. Yes. Yes. I apologize. I was not  
12 understanding that rebuild.

13 Q. So let me try that again. Were you aware  
14 that Joey Odom had told its first -- his first floor  
15 tenant, the Department of Homeland Security, that  
16 his intent was to restore the building?

17 A. Yes. Yes.

18 Q. Okay. So let me go back to the Plan A  
19 versus Plan B. I'm trying to, again, find the  
20 documentation that would explain this. Plan A is  
21 what's in your contract and proposal. That is the  
22 scope, and that is the price, correct?

23 A. Yes.

24 Q. Okay. And the time, the length of time  
25 it's going to take to do it?

1 A. Yes.

2 Q. And then with Plan B, the scope remained  
3 the same and the price remained the same, right?

4 A. Yes.

5 Q. Okay. We'll look at the schedule as far  
6 as changes. I think that probably would be a better  
7 place to look at that.

8 A. You can reference the schedule. But,  
9 like, after a certain point, it was moving  
10 components inside that schedule to see what would  
11 work out. And that happened -- I mean, I may have  
12 spent 2 hours on it a week and then -- I mean, at a  
13 certain point, it was -- we were -- it was a  
14 day-to-day item where, okay, well, you know, you  
15 guys are going to be here for this. Pretty much a  
16 trade by trade item. Okay. So you guys are going  
17 to be here next week, we're good, let's start here  
18 next week.

19 I would just walk into the owner's  
20 office, say, hey, you know, this is what we've got.  
21 And so again, I was right across that hallway from  
22 him. So anything that I had to give him, I just  
23 pretty much said -- just walked over there and told  
24 him.

25 Q. And you're talking that Joey Odom, right?

1 A. Yes, ma'am.

2 Q. Okay. I thought his office was next  
3 door? Is that what you're talking about, a separate  
4 address?

5 A. My office -- I actually went over into  
6 that office, into his office -- right across from  
7 his office inside. I was working inside the office  
8 that he was inside.

9 Q. That 622 Esplanade, that office?

10 A. Yes. That's where I had my computer set  
11 up.

12 Q. Okay. Understood. Now as far as changes  
13 to the schedule, do you -- when you have any impacts  
14 that are going to change the schedules, the critical  
15 path and the completion date, did you document those  
16 in your schedule, or how do you show what the cause  
17 of a particular day of delay is?

18 A. Again, it's -- I mean, I'm not -- there's  
19 not a -- you know, I may make it in notes in my logs  
20 where, we've gotten this. But the problems that  
21 I -- there is obvious problems that I build into a  
22 schedule. I build in, you know, a couple of rainy  
23 days. I build in, you know, somebody not getting  
24 something done. But a lot of the stuff, I do -- I  
25 guess I would say, long plan on them. If they need

1 to catch up, they can work on a Sunday. Or they  
2 maybe actually working on Sundays.

3 I was up there every single day for five  
4 months, literally every, single day. Trying to work  
5 this out. And at some point, I did completely  
6 deviate from making a schedule. Because I was  
7 trying to move so many components around. And it  
8 was just a phone call. I need you here this day to  
9 complete this. And so, you know, that deviation, I  
10 can't -- I don't have an exact date, but I was  
11 moving that schedule around quite a bit.

12 Q. Okay. And just to reiterate from the  
13 contract, the payments, there was an initial payment  
14 of 100,000 and a progress payment of \$250,000 and  
15 the owner paid those --

16 A. Yes.

17 Q. -- to Encore, correct?

18 A. Yes.

19 Q. And the final wasn't going to be due  
20 until you completed the work, and actually it was  
21 accepted by the owner, and you gave him a lien free  
22 certificate, and the insurance company paid the  
23 depreciation, right? That's what the contract says?

24 A. Right. But it's, you know, as far as  
25 progress payments, I mean, it's stating one progress

1 payment. So that doesn't -- I have another progress  
2 payment that I can apply. And so, yeah, I mean,  
3 that's just talking about one progress payment.  
4 There may be another one. It may not state it, but  
5 I may need another progress payment.

6 So it comes into the fact of, hey, you  
7 know, this is a job where you are going to get --  
8 and we have had some of these conversations. You  
9 know, it's fairly easy to see the damages to the  
10 building. Obvious damages that, you know, the roof,  
11 you know, a quarter of the roof blew off the  
12 building.

13 You know, any -- a lot of the contractors  
14 that do work, I mean, you could just assert an  
15 amount to this. We could say an average amount, you  
16 know, pay 250, \$300,000 you know, putting things  
17 together. You could say this is going to cost  
18 \$1.3 million. You could say this costs 1.6. You  
19 know, the average -- a good estimate, you can put  
20 those numbers together, could just say, hey, 1.3,  
21 we're okay. That was the initiated deal.

22 That this was so obvious that there were  
23 so many things that were obviously wrong with the  
24 building. That, hey, I mean, 1.3 just that's a  
25 given. But it got to the point to where I would

1 have conversations with the owner. And he was  
2 nervous, hadn't heard anything from the insurance  
3 company.

4 And I mean, these were maybe three  
5 hour -- these may be three hour conversations at  
6 night whenever he would walk over and tell me this.  
7 So again, like, my -- sometimes my discussions with  
8 him did influence like, you know, I mean, we're not  
9 looking like we're getting any funding, they're not  
10 even responding. So, yes, that changes my schedule.

11 Q. Mr. Monheiser, can you hear me?

12 A. Yes.

13 Q. I think we got off track. Remember this  
14 is question and answer. So, again, I don't like to  
15 cut a witness off when they have a train of thought.  
16 But at some point, I need to make sure the answer is  
17 tied to my question.

18 So again, just going back to the contract  
19 that you entered into on December 20, 2020. The  
20 agreement calls for an initial payment of 100,000 a  
21 progress payment of 250,000 for a total of \$350,000.  
22 And the owner paid Encore that money, correct?

23 A. Correct. Yes.

24 Q. And the contract further does not require  
25 any other payment. The next step is final payment,



1 and it happens when those four things that we  
2 discussed occur, correct?

3 A. It doesn't require -- it wouldn't -- it  
4 didn't go either way. It's not requiring anything.  
5 But it's not stating that there still needs to be  
6 progress payments if things pop up.

7 Q. Yeah, the contract doesn't call for any  
8 additional progress payments, other than what we  
9 have already discussed, right?

10 A. I don't like the -- I don't like the way  
11 that's phrased.

12 Q. So it's your interpretation that Encore  
13 could submit additional progress --

14 A. Yes. Yes. Depending on if things  
15 change, or if it -- if durations, you know, those  
16 kinds of situations, yeah, it could change.

17 Q. And that's not what 3.2.2 says. It says  
18 that final payment, which is the contract sum plus  
19 any change orders, and less the initial payment, and  
20 less the progress payment, subject to withholdings  
21 permitted in here shall be due within 30 days of the  
22 last of the following to occur. You understand that  
23 that's what the contract says, right?

24 A. Correct.

25 Q. And so let me just ask you again. I know

1 I've asked this question already. Did you have any  
2 side agreements with the owner about payments?

3 A. No. I mean, what do you mean by -- you  
4 have to be specific, like what side agreement?

5 Q. Any other written agreements, other than  
6 the proposal, and the contract that we have looked  
7 at, and the nine or so change orders that we will  
8 look at. Are there any other documents that make up  
9 the agreement between Encore and the owner?

10 A. No.

11 Q. Can you look at Tab E2? That's the  
12 contract, page 6 of the contract, which is Encore  
13 55.06.

14 A. Okay.

15 Q. I just -- I don't know what this section  
16 means. It says, Section 15 approvals, contractor  
17 warrants and agrees that all requisite approvals  
18 from the owner as to its eligibility to serve as a  
19 contractor, and the approvals of materials and  
20 performance of the work as required by the contract  
21 documents are obtainable. Did you write that  
22 provision?

23 A. I didn't -- no, I did not. I did not  
24 write that.

25 Q. Was this contract written by Encore, or

1 the owner, or somebody else?

2 A. I am not sure. It's a standardized. I  
3 think our lawyers wrote it.

4 Q. Okay. Do you have any idea what -- I  
5 mean, what is your interpretation or understanding  
6 of Section 15?

7 A. I am not sure.

8 Q. Okay. Contractor warrants and agrees  
9 that all requisite approvals from the owner as to  
10 its eligibility. Do you know whose eligibility they  
11 are talking about there to serve as contractor?

12 A. No.

13 Q. Okay. Once the owner signed the  
14 contract, and actually when the owner gave the  
15 advance authority to proceed on November 24, were  
16 there any stoppages in the work?

17 A. Yes.

18 Q. Okay. And what was that for?

19 A. There was a -- I believe it was in the  
20 mid of February there was a freeze. That we didn't  
21 have power for, like, three days. We didn't have  
22 running water for another, like, four days-ish. We  
23 didn't have power. You know, it was a two week  
24 delay.

25 Q. Okay. And I saw those -- that documented

1 in your daily logs and in your agenda meeting  
2 minutes with the owner.

3 MS. WOLF: Let me ask y'all about a  
4 lunch break because I see it's 12:40. I  
5 do need to take at least a 30 minute break  
6 to eat. Mr. Monheiser, is that --

7 THE WITNESS: That's fine.

8 THE VIDEOGRAPHER: Going off the  
9 record. The time is 12:40.

10 (OFF THE RECORD)

11 THE VIDEOGRAPHER: We are now on the  
12 record. The time is 1:19 p.m.

13 BY MS. WOLF:

14 Q. All right. Good afternoon,  
15 Mr. Monheiser, I had a couple of questions that I  
16 wanted to follow up on from our discussion prior to  
17 lunch.

18 THE WITNESS: Hold on. Hold on.

19 MR. COX: He's going to close the  
20 door. One second, please. Sorry about  
21 that.

22 BY MS. WOLF:

23 Q. You mentioned Mitsubishi. I assume they  
24 are a manufacturer, or a supplier, of HVAC  
25 equipment; is that right?

1 A. Yes.

2 Q. And they supplied the new HVAC equipment  
3 for this project?

4 A. Yes.

5 Q. Did Encore contract with Mitsubishi  
6 directly, or did the mechanical subcontractor  
7 contract with them?

8 A. Mechanical subcontractor did.

9 Q. Industrial Refrigeration?

10 A. Yes, ma'am.

11 Q. Okay. And let me ask you about the  
12 second floor roof insulation work. That was a code  
13 upgrade requirement, correct?

14 A. From my understanding, yes.

15 Q. I understood from the records that it was  
16 a spray insulation application; is that right?

17 A. There's -- yes. Yes, there is spray foam  
18 on the roof deck.

19 Q. Okay. And was that work in Encore's  
20 scope?

21 A. No.

22 Q. Who did that work?

23 A. The installation subcontractor.

24 Q. You mean the owner contracted directly  
25 with that installation subcontractor?

1 A. Yes, ma'am.

2 Q. Okay. Was there any prep work required  
3 on the roof or roof joists for the application of  
4 the insulation?

5 A. I don't know.

6 Q. Do you know if Encore had any prep work  
7 in its scope for that roof insulation?

8 A. No.

9 Q. Okay. Different question, different  
10 area. You had mentioned in your testimony not being  
11 able to access the inside of the windows because of  
12 the CMU wall, right?

13 A. Yes, ma'am.

14 Q. Okay. Did you or anyone review the  
15 possibility of removing and replacing that CMU wall  
16 as an option to gain access to the windows rather  
17 than replacing the windows?

18 A. Yes.

19 Q. Okay. And who considered that, you or  
20 somebody else?

21 A. I mean, it was a possibility to just try  
22 to get to the window at all costs. I mean, if you  
23 have to take down a CMU wall -- actually it was in  
24 connection of, how do we get to the windows? We  
25 needed to break or go take down the CMU walls to get

1 to them.

2 Q. Okay. So you considered that as an  
3 option, right?

4 A. I don't really think so, that wasn't  
5 necessarily an option. But if you were going to  
6 change them out, that's how you would have to do it.  
7 There's no other way around it.

8 Q. Gotcha. So let me ask you some questions  
9 about change orders. Let's just see if we can go  
10 through those. That's going to be in Tab H.

11 A. Okay.

12 Q. All right. You there? The first one  
13 under Tab 1 is change order number 6. It actually  
14 says SCO number 6; do you see that?

15 A. Yep.

16 Q. All right. And for the record, this is  
17 Encore 6, that's the Bates number. All right. This  
18 is a change order, plans for skim coat under and  
19 over top of entrance tile to prepare for LVT. Do  
20 you remember this change order?

21 A. Yes.

22 Q. And for the insurance allowance, it says  
23 zero. So this was not an item that was covered by  
24 insurance?

25 A. Yes, correct.

1 Q. Okay. So I'm correct, that was outside  
2 of insurance coverage, right? It was something --

3 A. Right.

4 Q. And we know the issue date on this is  
5 December 15. It actually it says '21, but that  
6 hasn't happened yet, so it was probably meant to be  
7 '20, right?

8 A. Yes.

9 Q. Okay. So this is actually before the  
10 contract date, right?

11 A. Probably.

12 Q. Because the contract --

13 A. I'm not sure.

14 Q. The contract date was December 20. And  
15 so this is five days prior to the contract date,  
16 correct?

17 A. Yes.

18 Q. But after the notice to proceed date of  
19 November 24th, correct?

20 A. Can you repeat that question?

21 Q. Yes. This is -- it's after the notice to  
22 proceed date that was in the contract of November --

23 A. Right.

24 Q. And down at the bottom for responses,  
25 there's a check, it says that it was accepted,



1 right?

2 A. Correct.

3 Q. But there aren't any signatures. Do you  
4 have a signed version?

5 A. No. It is a verbal communication between  
6 the owner and I. And that's been -- this is an item  
7 that I was giving to insurance company that we were  
8 doing that I knew was not intended to be on the  
9 scope of work. This was already included in my  
10 scope of work.

11 Q. Okay. So that was one of my questions.  
12 This \$2175.94 was included in your \$1.36 million  
13 cost?

14 A. Correct.

15 Q. Okay. Was this work done?

16 A. Yes.

17 Q. So I guess my question is. Is it really  
18 a change order to the contract, if it was already  
19 included in your scope and your price?

20 A. This was a item that I gave to the -- I  
21 wanted to document any items that I knew that would  
22 not be insurance related items that were in my scope  
23 of work. Again a hundred different ways to do them.  
24 This was an easy way for me just to put it on a  
25 change order sheet. And so those items are crossed

1 off and not charged in insurance related items, but  
2 they are in the contract.

3 Q. Okay. So did somebody ask you to track  
4 separately the insurance versus non insurance items?

5 A. No. They asked me specifically if I  
6 could figure out what would be insurance. And I  
7 have a couple of items on -- off the top of my head,  
8 so I just put those down.

9 Q. And who asked you that?

10 A. I can't remember.

11 Q. What are the universal possibilities?  
12 Who would be giving you instructions like that, that  
13 you would -- I mean, the client was Joey Odom/Four-O  
14 /Eaux Holdings, right?

15 A. Right.

16 Q. Did you take direction from anybody else  
17 other than your client?

18 A. Yeah. I mean, I take -- I take input  
19 from a variety of people.

20 Q. And who would those people be?

21 A. Subcontractors. I mean anybody as far as  
22 pertaining to this. This may have been a way for  
23 me -- Joey may have asked me to do this. But again,  
24 I don't know who would ask me to do it. I just -- I  
25 may have given it to him, may have sent it to

1 somebody. I don't really -- I don't remember who I  
2 sent this to.

3 Q. Okay. And then so back to my question.  
4 Was the owner required to pay this change order?

5 A. No. Because it's already a part of the  
6 contract. It's not a change order, it's just an  
7 item that was already included that I wanted to make  
8 sure that the insurance company would know that  
9 we're charging for it. It's not a change order.  
10 It's just an item that the insurance company is not  
11 going to be paid for -- by the insurance company.

12 Q. All right. Got it.

13 A. It's not going to the owner. It's just  
14 going to somebody who, you know, can say this is not  
15 what -- you know minus this from your scope. If you  
16 are going to look at my scope of work, take this out  
17 of it because that's not a part of insurance items.

18 Q. All right. But based on your prior  
19 testimony, you came up with some items that you knew  
20 off the top of your head that you weren't tracking  
21 exactly all of the items that were or were not  
22 covered, right?

23 A. Correct.

24 Q. The next one is item number -- if you go  
25 to Tab 2, Encore 7. This is change order number 7.

1 What does the S in front of CO mean?

2 A. It may -- this may be a subcontractor  
3 change order sheet. Whenever we do change orders,  
4 we usually would -- we make them out for the  
5 subcontractors. And so this may just be one that I  
6 just dragged out from a subcontracting change order  
7 versus a client.

8 Q. Okay. So this is a change order \$3,360  
9 associated with replacing the water fountain which  
10 was not damaged by the storm therefore --

11 A. Correct.

12 Q. -- this is not part of the insurance  
13 scope, correct?

14 A. Yes. Therefore that's why it's in this.

15 Q. This being?

16 A. This change order.

17 Q. Okay. And was this one accepted?

18 A. He signed the contract, so it's in the  
19 contract. This isn't for -- necessarily for Joey.  
20 I don't -- I don't know another way to explain this.  
21 It's not -- this is work that has already been  
22 included in the scope of work. And it's -- and  
23 selective items in my estimate that I've -- that you  
24 guys have.

25 Q. Okay. So this cost is part of the

1 \$1.36 million --

2 A. Yes.

3 Q. -- contract price?

4 And you did not expect the owner to pay  
5 this change order --

6 A. Right.

7 Q. -- because that would be double charging  
8 for it?

9 A. Correct.

10 Q. Right. Next go to Tab 3. This is  
11 Encore 1, change order number 1. Am I correct about  
12 that, change order number 1?

13 A. Yes.

14 Q. All right. And drying equipment and  
15 generator cost for Hurricane Delta.

16 A. Yes.

17 Q. So this is not something that is being  
18 charged, so to speak, to the insurance company for  
19 Hurricane Laura?

20 A. Correct.

21 Q. Okay. And the cost for this is \$6340,  
22 right?

23 A. That's what it says.

24 Q. And this is, in fact, a true change  
25 order, am I right about that? Because you wouldn't

1 have known about Hurricane Delta damage when you  
2 came up with the 1.36 million, or did you?

3 A. I'm not sure. Yeah, this is -- this is  
4 got to be prior to that. This has got to be -- this  
5 has got to be just a change order to know that this  
6 isn't a part of the insurance scope of work.

7 Q. Okay. But I guess my question is. And I  
8 don't want to make any assumptions. Is this part of  
9 the \$1.36 million contract amount, or was this a  
10 true change order where you were adding to it?

11 A. This is actually -- yeah, this one right  
12 here would be a change order add in because it  
13 actually adds to the contract amount.

14 Q. Okay. The next one is Tab 4, Encore 5,  
15 change order number 5. Are you there?

16 A. Yes, ma'am.

17 Q. All right. Purchasing and installing  
18 four exterior doors and hardware. This amount was  
19 included in the original contract. The doors were  
20 not damaged by the storm, and therefore not included  
21 in insurance scope work. That's what you have  
22 written there in this change order, right?

23 A. Yes.

24 Q. Okay. So this again is not a change  
25 order that you expected the owner to pay because

1 it's already in the contract price, right?

2 A. Yes.

3 Q. It was accepted by the owner?

4 A. Yes.

5 Q. The work was done?

6 A. Yes.

7 Q. All right. Next is Tab 5, Encore 2,  
8 change order number 2. Are you there?

9 A. Yes.

10 Q. All right. So this one was to install  
11 R-11 sound insulation for the second floor between  
12 the offices. There was no insulation between the  
13 rooms on the second before the storm, therefore is  
14 not in the insurance scope of work. This was  
15 included in the original Exhibit A and contract  
16 amount, correct?

17 A. Correct.

18 Q. All right. So this was not something  
19 that the owner was actually -- would actually have  
20 to pay because it is already in the contract?

21 A. Yes. If you look at the bottom where it  
22 says total, there is no -- it doesn't add to the  
23 contract amount. It just says 996-02 total 5000.  
24 If it was going to add to the contract amount, it  
25 would have an addition to the contract amount on it.

1 Q. Okay. And none of these change orders  
2 that we have looked at so far added any time to the  
3 contract; is that right? They always say 0 working  
4 days added.

5 A. I don't -- we don't necessarily fill that  
6 out. Some people do, some people don't.

7 Q. Did you do a determination as to whether  
8 or not this additional work would impact the  
9 critical path?

10 A. No. It basic -- it's basic items. They  
11 bid the work. These items that are added, they've  
12 already been bid and already been part of the  
13 critical path.

14 Q. Okay. The next one that I have is Tab 6,  
15 Encore 3, change order number 3. This one was to  
16 install closed-cell foam on exterior walls where  
17 there was batt insulation before the storm. And  
18 allowance for the batt insulation is included in  
19 this estimate. The total of this change order was  
20 included in Exhibit A of the original contract.

21 So based on the numbers you have here,  
22 there was a certain of allowance on the insurance  
23 side of the balance sheet, so to speak, or the  
24 covered item, but that this was an improvement over  
25 the batt insulation, so there's an additional



1 charge, right?

2 A. Correct.

3 Q. And was the entire amount for the foam  
4 insulation included in the original contract?

5 A. Yes.

6 Q. So this was not something the owner  
7 was -- needed to pay, because that would be double  
8 billing, right?

9 A. Correct.

10 Q. All right. Next is Tab 7, which is  
11 Encore 8, change order number 9. This is -- it says  
12 includes demo and --

13 A. Replacement -- sorry. Replacement of  
14 exterior sheathing.

15 Q. Okay. It's just a typo there --

16 A. Yes.

17 Q. So demo and replacement of exterior  
18 plywood that was not damaged by the storm. Changing  
19 out plywood that was called out by the engineer to  
20 be changed or was rotted. This amount was included  
21 in the original contract amount, but was not damaged  
22 by the storm. All right.

23 So there's no insurance allowance for  
24 this, and the total is \$19,074. And this is not an  
25 amount -- this change order was not something you

1 expected the owner to pay, because it was already in  
2 the contract price, right?

3 A. Right.

4 Q. And again, you allocated zero extra days  
5 for this work, correct?

6 A. Correct.

7 Q. And that -- was that something that you  
8 actually did a scheduling analysis on or you just --

9 A. What do you mean? This is work that was  
10 already going to be done anyway. But it's something  
11 that is not -- wood rot isn't covered by insurance  
12 companies.

13 Q. You're saying your schedule already  
14 accounted for this work, because it was in the  
15 contract already?

16 A. Yes.

17 Q. Okay. All right. The next one is Tab 8,  
18 Encore 4, change order number 4. And this is  
19 installing 14 VRF ceiling cassettes and two outdoor  
20 condensers, removing two air handling units,  
21 electrical, plumbing for additional units. So what  
22 is this scope? I don't know what a cassette is.  
23 Can you explain what that is?

24 A. You know what a mini split is, a mini  
25 split unit?

1 Q. I'll say yes. Yeah.

2 A. That just puts it on the wall and it  
3 blows air out. It's a ductless motor. It's a  
4 ductless. So this is one that actually sits up in  
5 ceiling grade.

6 Q. All right. So is this scope of work part  
7 of the design by ADG for the replacement air  
8 conditioning system?

9 A. Yes.

10 Q. All right. And explain the contract --  
11 well first of all, let me ask you. Is any of this  
12 something that was considered by anybody to be  
13 covered by insurance?

14 A. No.

15 Q. Okay. And then explain, you had a  
16 contract allowance of 52,500. Is that what that  
17 means?

18 A. Yes. I'm not sure exactly -- I'm not  
19 100 percent sure exactly how I got that out of  
20 there. But yes, there was an allowance that I was  
21 able to put towards this.

22 Q. So some of this was included in the  
23 original \$1.36 million contract price, but this was  
24 more than was accounted for, so there is a change  
25 order associated with this additional HVAC work,

1 correct?

2 A. It's a little more complicated than that.  
3 There was -- there were items in there that either  
4 we could get done for cheaper than originally  
5 estimated, or we would run it by Joey if he wanted  
6 to use contingency amounts that I knew that I wasn't  
7 using.

8 Q. So did you expect the owner to pay any of  
9 this change order?

10 A. Yes. I didn't -- at the point of  
11 submitting it, or handing it over to him, he wasn't  
12 sure exactly the amounts.

13 Q. So the amount that's on here, total  
14 change order cost of \$122,070. I just want to make  
15 sure I'm understanding your testimony. Is that the  
16 amount, the extra amount, that you expected the  
17 owner to pay for the --

18 A. At that time that I did this, yes, but  
19 now, no.

20 Q. Now the amount has changed?

21 A. Yes.

22 Q. Is it more or less?

23 A. Less.

24 Q. And is there a document that shows that  
25 accounting, that there's been a change?

1 A. I think in an invoice.

2 Q. Okay. And this particular change order  
3 added 14 working days to the schedule, right?

4 A. Yes.

5 Q. Okay. So look at the next tab, Tab 9.  
6 And I'm just trying to figure out because this is  
7 showing an amount of \$144,540 that has the HVAC  
8 which is slightly a different number than what was  
9 in your change order is 125,000. And it has the  
10 Hurricane Delta change order. But it also appears  
11 to have change orders 2 and 3, which if I'm not  
12 mistaken, you said you did not expect the owner to  
13 pay?

14 A. Correct.

15 Q. Okay. So it's your testimony that the  
16 change orders that we just went through, where you  
17 said you didn't expect the owner to pay --

18 A. The owner did not -- will not pay.

19 Q. Okay. All right. Then the next tab I  
20 have is Tab 10.

21 I may have forgotten to say that Bates  
22 number when we were on Tab 9, and I was asking about  
23 a document, that was Encore 9.

24 Now if you move on to Tab 10, this is  
25 Encore 10. And I just want to see if I can

1 understand this document. It's a listing of change  
2 orders 1 through 9 dated February 1, 2021. Do you  
3 have that?

4 A. Yes.

5 Q. Okay. So this one, it's got change order  
6 number 8 crossed out, that was the wet seal windows.  
7 Why is that one deleted?

8 A. I'm not sure why. I do not remember  
9 exactly why I decided to cost that out.

10 Q. But again, based on your testimony, these  
11 were not -- some of these, the ones you have  
12 testified to, these were things that you were not  
13 expecting the owner to actually pay because they  
14 were already in the contract price, right?

15 A. Correct. So could you repeat that one  
16 more time?

17 Q. Yeah. I was trying to just kind of sum  
18 up what is your testimony was. It is what it is. I  
19 mean, you've gone through each change order, and you  
20 have told me specifically which ones you did not  
21 expect the owner to pay as a change order --

22 A. Correct.

23 Q. -- but were already in the contract  
24 amount, right?

25 A. Correct.

1 Q. Okay. Let's go look at the next tab,  
2 which is Tab I. These are what we have designated,  
3 or found in your documents, as meeting visits, site  
4 visits, and punch list. So I have some questions in  
5 here for you. Let me ask you. Go to Tab number 2.  
6 This is Encore 80 through 80.49.

7 A. Yep.

8 Q. It's an ADG engineering site visit report  
9 dated November 30, 2020, correct?

10 A. Correct.

11 Q. So under the description it says.

12 Shane Hernandez and Paul Montgomery with  
13 ADG visited the two-story 17,162 square foot  
14 building located at 620 Esplanade Street to assess  
15 the existing heating, ventilating, and air  
16 conditioning system.

17 I skipped a bit of that because that  
18 wasn't important, that was just the intro part. The  
19 next paragraph it says.

20 Our original discussion involved doing an  
21 upgrade to the existing HVAC system to the first  
22 floor tenant space. However, upon reviewing the  
23 existing system, we discovered that the building's  
24 existing HVAC system has one compressor and  
25 condensing unit that serves both the first floor and

1 the second floor. Any modifications to the system  
2 would need to encompass both floors.

3 Is that statement that they wrote in this  
4 site visit report, did that change later, or is that  
5 still accurate, that the modifications that they are  
6 doing are the improvements and upgrades to the HVAC  
7 system, each encompassed both floors?

8 A. I'm not an HVAC guy. They did not design  
9 that HVAC system down there. So they can run both  
10 floors. They can run both floors. It's a simple --  
11 it's just a -- it's a -- I know I said this before.  
12 Is a precursor to a mini split unit. It's very --  
13 it works fine.

14 Q. So at this point -- and really, just to,  
15 I guess for the record, there are two dates on this  
16 document. One it says ADG engineering site visit  
17 report November 30, 2020, and then it has right  
18 under that, prepared by ADG administrator 9 --  
19 December 9, 2020. And it says in the first  
20 paragraph that they did their site visit on  
21 November 30. So I'm assuming that this report got  
22 written, like, a week later. But at this point, you  
23 have already contracted with ADG to do this work,  
24 right?

25 A. I'm not sure. I know we reached out to



1 them. We -- I did -- I was okay with them doing the  
2 sight visit. I do remember there was a discussion  
3 about a site visit to go over some of the changes,  
4 if they were to happen.

5 Q. Okay. So at least at this point by  
6 November 30, you had had enough of a go-ahead from  
7 the owner to go ahead and contract with an engineer  
8 to do this upgrade work for the HVAC system, right?

9 A. No. I had -- I didn't have very much  
10 from him at that time. It was -- it was an optional  
11 item.

12 Q. You mean the improvements or upgrades to  
13 the HVAC system was an optional item at this point?

14 A. Yes. I didn't know enough about the  
15 system. And so we wanted to just get insight.

16 Q. The owner knew that you were hiring an  
17 engineer and paying an engineer to go out and do a  
18 site visit to upgrade the HVAC system, right, or at  
19 least to investigate it?

20 A. Yes.

21 Q. So at this point, the owner was  
22 committing to moving forward not with repair of  
23 hurricane damage, but with the potential for an  
24 upgrade to the HVAC system, right?

25 A. I don't think he was prepared for that at

1 all.

2 Q. Okay. So --

3 A. Again, it's just -- it's an option. It's  
4 just -- it's a servicing -- it's a -- I believe this  
5 report was, like, under a thousand dollars. So we  
6 just wanted to have an option. If we were going to  
7 do something, what would we do? That's it.

8 Q. And, in fact, the owner did decide to do  
9 the upgrade to the HVAC system on the first floor,  
10 right?

11 A. A portion of the first floor.

12 Q. And that work has been done and paid for;  
13 is that right?

14 A. Maybe. Depending on how -- how it's  
15 looked at.

16 Q. Do you know has Industrial Refrigeration  
17 and Mitsubishi been paid for --

18 A. I have paid them.

19 Q. Have you been paid?

20 A. I am not sure how you could decipher it  
21 from the invoice and what was paid.

22 Q. So you're not -- Encore is not able to  
23 say whether or not it's been paid for any specific  
24 scope of work at this point?

25 A. No. The last invoice was not paid in

1 full. So I don't -- there's -- there's a handful of  
2 items on that last invoice. So I'm not sure exactly  
3 what I could dedicate the amounts that was paid to  
4 me for.

5 Q. All right. Let's look at Tab number 3.  
6 This is Encore 77 through 77.04.

7 A. Yes.

8 Q. All right. This is an April 15, 2021,  
9 punch list, correct, for the first floor?

10 A. Yes.

11 Q. Is this the one and only punch list for  
12 the first floor?

13 A. No.

14 Q. Was there a running punch list where  
15 everything was combined, or are there separate punch  
16 lists somewhere?

17 A. In that sheet there's a punch list, in J  
18 there is a punch list. But let me see here --

19 Q. Well, we'll start with this one then. So  
20 we're back to Encore 77 through 77.04. And this is  
21 a punch list for the first floor?

22 A. Yes.

23 Q. You have already said that they are moved  
24 in, and you are done with the first floor, right?

25 A. Yes.

1 Q. I scanned through. You've got a column  
2 called completion deadline at the top?

3 A. Yes.

4 Q. And you have a column called date  
5 completed?

6 A. Yes.

7 Q. And I scanned through and found, I think,  
8 three items that were a day or two past the  
9 completion deadline. Look at Encore 77.02.

10 A. How many items were there?

11 Q. I counted three.

12 A. Out of how many?

13 Q. However many there are in this --

14 A. 113.

15 Q. Yeah, 113.

16 A. Okay.

17 Q. Okay. So let me ask you. Item  
18 number 57, window trim addition in office 115. That  
19 one appears to have had a completion deadline of  
20 April 14 and a date completed of April 17, correct?

21 A. Yes.

22 Q. So three days past the deadline. Why was  
23 that a particular one late?

24 A. I'm not sure.

25 Q. Okay. Look down at 69, spackle and paint

1 touchup. It was one day past the deadline. Do you  
2 know why that one missed the deadline by a day?

3 A. Let me see here. No. I mean, it's just  
4 a day late.

5 Q. All right.

6 A. It may have been whenever I looked at it.  
7 So I mean, it's -- I may not have looked at all  
8 these on that day. That's whenever I walked and saw  
9 it.

10 Q. Right. So that's not marking the date  
11 the work was actually completed, that's the date  
12 when you noted --

13 A. That's the day that I was -- I saw it,  
14 that it was completed.

15 Q. Okay. What does the column date issued  
16 mean?

17 A. Sometimes it's whatever I have given  
18 items for a punch list to a subcontractor. Or we  
19 have walked a job, and I have given him punch list  
20 items. We call it marking everything with blue  
21 tape. So I walk the site and mark everything with  
22 blue tape, they would write it down, and I'd go back  
23 and start writing stuff down, and go back and check  
24 it.

25 Q. Okay. Let's look at Tab 4, which is

1 Encore 76 through 76.02. It is a punch list. Even  
2 though it doesn't say punch list, this is considered  
3 an inspection punch list, right?

4 A. Yes.

5 Q. And this is from a GSA inspection?

6 A. Correct.

7 Q. And it's dated May 6, 2021, correct?

8 A. Yes.

9 Q. So I went through all these items. You  
10 know, obviously we can't read all of this right now.  
11 But you are free to scan it yourself. But to me all  
12 these items are minor, they are touchup paint, they  
13 are cleaning, caulking of a window, installing a  
14 switch plate. Do you agree with that, these were  
15 all minor punch list items?

16 A. Yes.

17 Q. And none of this stuff would actually be  
18 preventing the GSA from occupying the first floor,  
19 correct?

20 A. That's not -- I don't make that decision,  
21 that's GSA.

22 Q. Okay. Do you know GSA's move in date  
23 when they moved back in?

24 A. It's probably in my notes.

25 Q. That's fine. But you don't know it off

1 the top of your head?

2 A. No.

3 MR. COX: Excuse me. I just want to  
4 say we're at 2:00. I'm not trying to  
5 hurry anybody. I know have got -- you're  
6 not even through the first binder of  
7 documents, and we have got several hundred  
8 pages in the second binder.

9 I want to alert everybody, though,  
10 that I have a video deposition in a  
11 multiparty case that I can't control  
12 that's going forward at 4:00 today. So I  
13 need to knock off at 3:15, which is an  
14 hour and 15 minutes. And I don't mind  
15 reconvening on another date.

16 MS. WOLF: Okay.

17 MR. WOLFF: Well, wait. Wait. We  
18 need -- Mike, we've got to get prepared  
19 for experts. So you can have someone fit  
20 in?

21 MR. COX: No, but I'll do this. I  
22 mean, that deposition is of a driver in a  
23 automobile collision case, a commercial  
24 case. And when I'm done with it, I'm  
25 willing to work till the wee hours of the

1 morning on this. I don't mind doing it.  
2 I just -- I didn't anticipate this would  
3 go seven or eight hours.

4 MR. WOLFF: Well I'll defer to Mary  
5 Anne, but I do think we need to finish it  
6 because of our deadlines.

7 MR. COX: I don't mind coming back  
8 tonight and staying as late as you guys  
9 need to stay.

10 MS. WOLF: Tonight is not a good  
11 option for me. But we do have Vanchiere  
12 scheduled tomorrow. And I'm wondering if,  
13 depending on how long that one takes, if  
14 we could complete this one tomorrow. And  
15 again, it's --

16 MR. COX: Would that be okay with  
17 you?

18 THE WITNESS: Depending on what time.  
19 What time I've got go back here.

20 MS. WOLF: Are you able to start --  
21 Mike, are you doing Vanchiere's in the  
22 morning?

23 MR. COX: I am not. But I'll be  
24 around tomorrow. And I can certainly  
25 participate in this one, if I need to.



1 THE WITNESS: I may not be in the  
2 proper attire. But, you know, just you  
3 can give me a call and tell me, then I  
4 could head over here and do it.

5 MS. WOLF: Is there any possibility  
6 of doing both at the same time so that we  
7 can resume this one at 9:00 in the  
8 morning?

9 MR. COX: I could resume this one. I  
10 have any an 8:30 phone conference. I  
11 could resume it at 9:30.

12 MS. WOLF: Ms. Villien, is there any  
13 way for y'all to do two at one time? I  
14 know you need a separate court reporter,  
15 but do you think that's a possibility?

16 COURT REPORTER: I would need to just  
17 get with my office to make sure that we  
18 have somebody available for tomorrow. I  
19 don't have the whole schedule for the  
20 office, so I'm not sure if there's any  
21 reporters available. But if that's  
22 something that you think that we're going  
23 to do, I would maybe like request to go  
24 off the record, let me make a couple of  
25 phone calls so that our scheduler can try

1 and get somebody lined up.

2 MS. WOLF: Yeah. I can't do it  
3 tonight. We have an expert report  
4 deadline that is not moveable even by  
5 agreement of the parties, I don't think.  
6 So I -- and we can't all sit around  
7 waiting to see when Vanchiere's ends.

8 MR. COX: I would think, though, that  
9 based on the fact that we're not halfway  
10 through the documents, we are going into  
11 tonight anyway, if we still try to go  
12 today.

13 MS. WOLF: Okay. I guess I'm not  
14 following you. Because we have to break  
15 in an hour because you've got another  
16 depo, right?

17 MR. COX: Right, right, right. But  
18 what I'm saying is, even if I didn't have  
19 another deposition, at the rate we're  
20 going, we're going to be here past  
21 midnight anyway. So if that's not an  
22 option, we'll have to do it tomorrow  
23 anyway.

24 MS. WOLF: Yeah. I mean, I don't  
25 think we would go to midnight. What I'm

1 proposing, unless anybody has thought of  
2 anything better, is if the court reporter  
3 can get somebody else lined up for  
4 tomorrow for this one, that we resume at  
5 9:30 as soon as Mike's available, and we  
6 finish this one. Because it's a different  
7 attorney in our office taking Vanchiere.  
8 So I can do this one starting whenever  
9 you're ready in the morning.

10 MR. COX: Sure. And I'm fine with  
11 that. And I don't think we're going to  
12 have any problem finding a court reporter  
13 in Lake Charles to do that.

14 MS. WOLF: Okay. Ms. Villien, I  
15 would like for you to see if your office  
16 can accommodate. The only thing is, I'd  
17 also like to keep going. So we need you  
18 for that. So do you think --

19 COURT REPORTER: If we can go off  
20 for, like, 5 minutes, and I can make a  
21 phone call. I can have her -- I'm  
22 actually scheduled for the one tomorrow,  
23 so I could finish this one tomorrow, but I  
24 need to make sure we can get the other  
25 one.

1 MS. WOLF: That makes more sense for  
2 you to be involved in this one. Let's  
3 take a restroom break, please, and then  
4 Ms. Villien, if you could find out if  
5 there's a court reporter to do Vanchiere  
6 tomorrow at 9:00 that would be great.

7 COURT REPORTER: I'll make some phone  
8 calls. Thank you.

9 THE VIDEOGRAPHER: Going off the  
10 record. The time is 2:03.

11 (OFF THE RECORD)

12 THE VIDEOGRAPHER: We are now on the  
13 record. The time is 2:14.

14 BY MS. WOLF:

15 Q. All right. Mr. Monheiser, we were  
16 looking at Tab I4. Have you got that one open,  
17 that's Encore 76?

18 A. Yes.

19 Q. 76.03. Have you got that one?

20 A. Yes.

21 Q. Okay. Great. So we've already talked  
22 about what this is, it's the GSA, their final punch  
23 list. You note in item -- or what's noted in item  
24 number 4 is the exterior paneling. And it says  
25 contractor shall complete panel install. This is

1 not preventing acceptance. Do you see that?

2 A. Yes.

3 Q. All right. So if I'm correct, what that  
4 means is the work that was being done on the  
5 exterior of the building to replace the paneling was  
6 not preventing the first floor tenant from accepting  
7 and moving into the building; is that correct?

8 A. I don't -- I don't know. It's depending  
9 on where it was at, I'm guessing. But he may be --  
10 they may be framing to a certain spot. Yeah, he's  
11 asking for -- he's saying elevations eight, seven,  
12 and six. I don't know those off the top of my head,  
13 but as long as they're not in entrances, it  
14 shouldn't affect.

15 Q. Who wrote these notes?

16 A. GSA.

17 Q. Okay. And look at item number 5 having  
18 to do with the windows. It says.

19 Second floor window needs to be  
20 installed, cracked window at elevation eight on the  
21 first floor ICE space. GSA informed by lessor they  
22 will be replacing all windows. Windows will have  
23 blast film per lease security requirements.

24 Were you involved in any communications  
25 between the owner and GSA regarding replacement of

1 all the windows?

2 A. Repeat the question. I'm sorry.

3 Q. Yes. Were you involved in any  
4 communications between the owner and GSA about  
5 replacing all of the windows?

6 A. I was present during the conversation.

7 Q. Okay. And tell me about that  
8 conversation.

9 A. It was during the walk-through and they  
10 said they were trying to get new windows.

11 Q. And you're talking about walk-through for  
12 the punch list?

13 A. Yes. Again, I don't know the specific.  
14 It came up whenever he asked -- there was a broken  
15 glass on the second floor. And so I think it was  
16 Joey, the owner, stated we are working on the new  
17 window system right now.

18 Q. Okay. And do you know if the windows  
19 that existed prior to Hurricane Laura hitting, did  
20 they have the blast film that's --

21 A. Yes.

22 Q. Yes. And was the same thing -- is the  
23 same thing going to be put back? Or I guess I  
24 should say, because the windows were replaced. Was  
25 the same thing put back on the windows, the same

1 film?

2 A. Are you talking about windows or glass  
3 glazing?

4 Q. What was put in now? Because as I  
5 understand it, the window replacement has not  
6 happened?

7 A. Correct.

8 Q. But there were corrections or repairs and  
9 replacements done to the windows after the storm?

10 A. Correct.

11 Q. Okay. And does -- do the windows that  
12 are there now have blast film on it?

13 A. Some of them do, yes. But they're on the  
14 second floor. The ones that we switched out, the  
15 actual glass pieces that we switched out, on the  
16 second floor, those do not have to have -- those  
17 weren't specified by GSA to have glass glazing on  
18 them or -- I'm sorry, blast rated glazing on them;  
19 glazing film. This is specifying the new window  
20 system will have GSA required.

21 Q. Okay. Let's look at Tab K, those are the  
22 schedules.

23 A. Okay.

24 Q. You mentioned in your earlier testimony  
25 that you had prepared three initial schedules. Do

1 you remember saying that?

2 A. Yes.

3 Q. And that you were -- you couldn't be sure  
4 if the owner got all three of them, but you know  
5 that you had given the owner two of them, correct?

6 A. Yes.

7 Q. Let's look at the first one, which is  
8 Encore 94.

9 A. Okay.

10 Q. This one has a closeout date, finish  
11 date, of December 22, 2020. Do you see that?

12 A. Yes.

13 Q. Is this the first -- or can you tell me  
14 when you prepared this schedule?

15 A. This is -- oh, man, I can't. I honestly  
16 do not know. This had to be -- it looks like  
17 October is when that line is drawn, so probably  
18 around that time.

19 Q. Okay. If you look at the very top, it  
20 has a start date of September 15, 2020, right?

21 A. What is the name of this document that I  
22 labeled it as?

23 Q. This is -- what I have here is Encore 94,  
24 and the back page is Encore 94.02.

25 A. But what did I label it as?



1 Q. Oh, you mean like a folder name, or  
2 something?

3 A. Yeah. I labeled it as something. That  
4 might tell -- give me a little bit more information  
5 about what it is.

6 Q. This was in a file folder named  
7 schedules.

8 A. Does it -- does this file specifically  
9 say preliminary schedule, some -- anything, rough  
10 schedule, rough?

11 Q. Did somebody ask you to prepare this  
12 schedule?

13 A. No. I did -- sometimes whenever we put  
14 together a schedule, like, it's a -- we give an  
15 example of what a schedule would look like. This  
16 could be an example of what a schedule looks like.

17 Q. Do you know if this is one that you gave  
18 to the owner?

19 A. I am not sure. This looks like a base  
20 formatted schedule that I just -- that I added it.  
21 It's a template.

22 Q. All right. Let's move on to Tab 2, K2.  
23 And this document is Bates label to Encore 92 --

24 A. Yep.

25 Q. -- to Encore 92.02. This one shows a

1 start date, it's a little bit more detailed than the  
2 prior one that we just looked at; would you agree  
3 with that?

4 A. Yep.

5 Q. And it has a start date of October 12,  
6 2020, right?

7 A. Yep.

8 Q. And a obtained certificate of occupancy  
9 finish date of December 30, 2020, right?

10 A. Yep.

11 Q. Why did -- what was the purpose of this  
12 schedule?

13 A. I'm not sure. I would have to look at  
14 what I named it in my file. This may be the main  
15 schedule that I -- that I made.

16 Q. When you say you need to see what you  
17 named it, are you talking about your file name?

18 A. Yes.

19 Q. So you have it as an electronic document,  
20 and you named the file something?

21 A. Yes. If I added it to dropbox, again, I  
22 have multiple documents I name different to label  
23 what it would be.

24 Q. Okay. Am I correct that you, then,  
25 prepared this document? What we're looking at as

1 Encore 92, you prepared this?

2 A. Yes.

3 Q. And can you tell me when you prepared it?

4 A. Probably around November.

5 Q. You prepared it in November?

6 A. Around in November. I don't know the  
7 exact date. That doesn't give me a date that I  
8 created it. But it looks like there's a line that  
9 usually decides what that date is that I was on.  
10 That's a vertical line, and so probably around the  
11 19th.

12 Q. What line are you referring to?

13 A. There is a line on the -- it's on the  
14 right next to the 18th, the date, and if you move it  
15 over there, there's a line, that is usually a green  
16 line that indicated the day that I created that.

17 Q. So I'm having trouble following you. Am  
18 I looking to the left where the lined items are, or  
19 to the right where you have the actual November,  
20 December, January, schedule?

21 A. You are looking to the right. It says  
22 November 2020 at the top. Do you see that?

23 Q. Yes.

24 A. Then there is a -- it says -- go down to  
25 the line below, it says 8/13 then it says 18. Those

1 are the dates.

2 Q. Yes.

3 A. Okay. So if you go a little bit to the  
4 right, you will see a vertical line.

5 Q. Yes.

6 A. That's -- sometimes that -- I think if  
7 it's green, that indicates that -- the date that  
8 you're on.

9 Q. Okay. And what was the purpose of this  
10 schedule?

11 A. To give it a more specific time.

12 Q. Was Encore -- vis-a-vis this schedule,  
13 was Encore promising the owner, or telling the  
14 owner, that they could give them a certificate of  
15 occupant on the building by December 30, 2020?

16 A. Following the schedule, yes.

17 Q. Did Encore start work on October 12,  
18 2020, which is the very first start date up at the  
19 top?

20 A. No. It doesn't have -- that's not the --  
21 that's submittals. That's preliminary requirements.

22 Q. Okay. And the first part of it is all  
23 the preliminary interior design schedules. Did you  
24 get all of those engineering and interior design  
25 schedules by the deadline shown on here?

1           A.       I can't remember. Going back to the  
2 documents, we were -- I think I got 90 percent.  
3 Again that 90 percent whatever that says. But some  
4 of these items we got, some of them, we didn't.

5           Q.       Okay. And the same thing if you look  
6 down to the HVAC work. We have already looked at  
7 some of the dates on the plans that ADG provided  
8 that are after these finish dates on here, right?  
9 So the engineering stuff wasn't done by the dates  
10 that you anticipated in this schedule; is that  
11 correct?

12          A.       Correct.

13          Q.       So when does this schedule on Encore 92  
14 show Encore actually starting the work?

15          A.       I guess you would have to coordinate that  
16 with notes or logs. That's how, I mean, you would  
17 identify that. If I had workers there or not. But  
18 I know that this is something that we said, if we  
19 had -- if you have a signed contract, this is  
20 something that we can do. If you -- but we didn't.  
21 So it's not -- it's not relevant.

22          Q.       Can you say that again? I'm sorry. You  
23 broke up a little bit.

24          A.       This is something that we said, that if  
25 we had a signed contract, we could do. But it

1 wasn't signed, so it's not relevant.

2 Q. Okay. And you couldn't sign the contract  
3 until Encore was licensed in the State of Louisiana,  
4 correct?

5 A. That's not whenever this was made,  
6 though. This was made after. It had to be made  
7 after.

8 Q. What I said is true through, right,  
9 Encore couldn't enter into a signed contract, or any  
10 contract, until they got their license, right?

11 A. But he didn't sign it until the December.  
12 So that wasn't the only thing that was holding them  
13 up.

14 Q. But the contract has a notice to proceed  
15 date of November 24, correct?

16 A. Correct.

17 Q. Right.

18 A. And just to be aware, I mean, the notice  
19 to proceed, there was -- and again, referencing  
20 logs, you can probably tell the amounts of work that  
21 was going on, you know, during those times.

22 Q. Right. The meeting --

23 A. But fairly minimal until the December and  
24 mid December.

25 Q. And the work that was being done is

1 accurately reflected in your daily logs and in your  
2 meeting agendas, correct?

3 A. In my daily logs.

4 Q. Does this Encore 92, does it show Encore  
5 engaging in any construction work prior to  
6 November 19?

7 A. I don't -- I'm not sure. I don't think  
8 so. It doesn't look like there is. It's probably  
9 just main items. You know, again, doing a couple  
10 of -- demo to save stuff, referencing -- you know,  
11 doing some temporary dry in. Little items like  
12 that, I mean, I'm not going to put on the schedule.

13 Q. What about the electrical work? Did  
14 Encore have an electrical subcontractor working for  
15 it?

16 A. Yes, we did, but it wasn't until later.  
17 I don't know those specific dates. It was -- they  
18 may have done some things as far as cleaning up some  
19 ceiling grid stuff, above ceiling grid items, around  
20 that commencement date.

21 Q. So if we look at the electrical has a  
22 start date of October 26, 2020. That was certainly  
23 prior to when Encore was licensed on November 19,  
24 correct?

25 A. Let's see here --

1 Q. If you go down to item 14, electrical, it  
2 has a start date of October 26. So that's prior  
3 to --

4 A. Oh, I see that. I'm sorry. I was  
5 reading this wrong. That's -- you know, I see up in  
6 the top the November. I never saw that right below  
7 it is November 2. So actually this schedule  
8 actually would have been a preliminary schedule. I  
9 apologize. I didn't see that 2 that was right below  
10 it. And I was in November on this schedule.

11 Q. So if you just focus on the electrical  
12 work, there are some dates on the start date, the  
13 October 26 date, the October 29 date, the November 3  
14 date, the November 6 date. All of those days that I  
15 just called out were prior to when Encore was  
16 licensed, right?

17 A. Yes.

18 Q. So those are not feasible start dates for  
19 any work under Encore's scope, right?

20 A. Correct.

21 Q. Same thing with plumbing. There's an  
22 October 30 start date there. That one is not an  
23 accurate or feasible start date because Encore  
24 wasn't licensed on that date, right?

25 A. Correct.



1 Q. And then if we go to the mechanical  
2 heating and cooling section, there are dates of  
3 November 2, November 3, and November 9, which are  
4 not accurate or feasible start dates because Encore  
5 was not licensed on those dates, correct?

6 A. Yeah. Again, I think you're looking at  
7 the preliminary schedule. So, I mean, that's --  
8 this is the entire building.

9 Q. Got it. Yeah, I understand. So this was  
10 a preliminary schedule. And as we have just looked  
11 at by going through some of the things or values or  
12 the scope, this schedule wasn't feasible because  
13 Encore didn't -- wasn't licensed then. And the same  
14 thing with the building enclosure, it's got dates  
15 prior to November 19. So the same thing is true --

16 A. Right. I just want you to know that  
17 whenever I asked what the filename is, I don't -- I  
18 mean my filename. What did I name it? Because this  
19 is my preliminary schedule now that I'm looking at  
20 it. So it would have told me that this is one that  
21 we sent off at the beginning.

22 Q. Okay.

23 A. That's what I mean. I just wanted to  
24 make sure that I was clear on that.

25 Q. Right. And as you said, the owner was

1 well aware of Encore's licensing status --

2 A. Yes, ma'am.

3 Q. -- so the owner would have -- right.

4 So let's go ahead and look at number 3,  
5 Tab 3, which is Encore 91.

6 A. Okay.

7 Q. And Encore 91.02. This one shows a  
8 little bit earlier certificate of occupancy date --  
9 of -- I'm sorry, later of February 16. Do you see  
10 that in item 60?

11 A. Yes.

12 MR. COX: I need to take a break for  
13 one minute, please.

14 MS. WOLF: Okay.

15 THE VIDEOGRAPHER: Going off the  
16 record. The time is 2:36.

17 (OFF THE RECORD)

18 THE VIDEOGRAPHER: We are now on the  
19 record. The time is 2:42.

20 BY MS. WOLF:

21 Q. All right. Mr. Monheiser, we were  
22 looking at Encore 91. This is another schedule.  
23 Did you prepare this schedule?

24 A. Yes, I did.

25 Q. Okay. And this one shows a certificate

1 of occupancy date of February 16, 2021. Do you see  
2 that?

3 A. Yep.

4 Q. And using how you explained before about  
5 how we could determine when this document was  
6 created. If we look at that vertical line, I see a  
7 vertical line around November 27. Do you see that?

8 A. Yep.

9 Q. And so would that be the date that you  
10 prepared this schedule?

11 A. Yes. It may have been the date that I  
12 printed it.

13 Q. The date printed?

14 A. Yes. Or saved it, or whatever I -- at  
15 that point -- yes.

16 Q. Okay. And this -- if we look over at the  
17 start date, this particular schedule still has some  
18 work shown as starting prior to November 19. In  
19 plumbing there's a November 18 date and --

20 A. Because there was no plumbing.

21 Q. What's that?

22 A. There was no plumbing work. There was no  
23 plumbing rough in.

24 Q. Okay. Why do you include a start and  
25 finish date and a one-week duration for work that

1 doesn't exist?

2 A. It's not a one-week duration. It's a --  
3 there was no plumbing rough in. So there was  
4 plumbing to be done, but not rough in.

5 Q. Okay. So this rough in plumbing and  
6 service, this is something that --

7 A. You usually do when the walls are open.

8 Q. Yeah. Okay. I'm just wondering why it's  
9 listed at all on your schedule, if it's not relevant  
10 to this project?

11 A. Is that -- is that a question?

12 Q. Yes.

13 A. I had it in there, so I don't know.  
14 Usually whenever I do this, I have to -- sometimes I  
15 have to reallocate that, or it may ask me a question  
16 to reorganize items. So, I just didn't take it off  
17 of there.

18 Q. Okay. So if you go down to the  
19 mechanical heating and cooling, there's a six to  
20 eight day duration work, and it shows a start date  
21 of November 9, as well as the preliminary HVAC work.  
22 And that's not -- wasn't a feasible start date  
23 because Encore wasn't yet licensed, right?

24 A. This doesn't necessarily mean my work.  
25 This could be other people's work as well. Like I

1 didn't do the roof, but I have got the roof on  
2 there.

3 Q. Right. But the HVAC work was under  
4 Encore's contract, right?

5 A. Yes. Whenever the contract was signed.

6 Q. Okay. Yeah, this is a preliminary  
7 schedule. And what you have on here are some start  
8 dates prior to license -- to the time --

9 A. But that may not be my work. I may -- it  
10 may -- something may be going on before any --  
11 before this. Again, I am not sure. Again, it may  
12 not be the work that is designated for me. Just  
13 like, again, I've got the roof on there. I  
14 obviously didn't do the roof, but I have it on  
15 there.

16 Q. Okay. So these are the three schedules  
17 that I found in PDF form. And of course, you have  
18 supplemented with your natives. But let me ask you  
19 about -- I'm going to share my screen and ask you  
20 about a schedule that I found that looks like these,  
21 and it's in the owner's documents. And I want to  
22 ask you where this came from. And so let me go over  
23 here and share screen. And can you see that  
24 schedule?

25 A. Yes.

1 Q. Okay. Let me see if I can blow it up  
2 just a bit. No. You see, I want you to be able to  
3 see the whole thing. But we can zoom in if you have  
4 trouble reading it. So this is Encore -- I'm sorry,  
5 it's not an Encore document. It's -- the Bates  
6 number on it is Eaux, that's E-a-u-x, Odom, O-d-o-m,  
7 406 and 6.02. Do you recognize the schedule as  
8 something that you prepared. And let me go ahead  
9 and click through so you can see it all. It's three  
10 pages. That last page doesn't have anything on it,  
11 and it's 6.03. But is this a schedule of that you  
12 prepared?

13 A. I'm not sure.

14 Q. And what -- how would you go about  
15 determining if this was a schedule you prepared?

16 A. I don't know. I've got no clue how I  
17 would do that.

18 Q. Okay. It looks like -- similar to the  
19 three schedules we just looked at, right? Not  
20 exactly the same, because this one has a --

21 A. Usually anything that matters a lot of  
22 times I'll make the bars a different color. I am  
23 known for making the bars a different color for each  
24 trade. But, again, sometimes I have template --  
25 templated schedules that we use for different

1 buildings.

2 Q. Do you know of anybody else on this  
3 project who was -- who would have created a  
4 schedule, or who was keeping schedules like this?

5 A. No, not that I know of.

6 Q. Okay. This looks like it is the same, or  
7 a similar format, to the three schedules we just  
8 looked at that you did prepare; would you agree with  
9 that?

10 A. It's in Microsoft Projects, yes.

11 Q. Yes. Okay. And one of the issues is, if  
12 you look at line 63, obtain certificate of  
13 occupancy, it's got a date on there of December 22,  
14 2020, which doesn't match up with -- let me make  
15 sure -- it doesn't match up exactly with the three  
16 schedules we just looked at, right? It's a  
17 different certificate of occupancy date, right?

18 A. Yep.

19 Q. Did you prepare a schedule that looks  
20 like this with these red start dates in large font?

21 A. I do not remember. I have no clue. I do  
22 a variety of things. So I mean, I don't -- I'm not  
23 sure.

24 Q. You see this red box that I'm drawing  
25 around right here, around the start dates with the

1 big red arrows?

2 A. Yes.

3 Q. Okay. Is that something you know how to  
4 do?

5 A. Yes.

6 Q. All right. And down here where it says  
7 finish date with three exclamation points, do you  
8 know how to draw a red box --

9 A. Yeah.

10 Q. -- like that?

11 You don't recall Joey Odom, or somebody  
12 with Skyline, asking you to do this?

13 A. I don't remember. I have no idea why  
14 they would ask me to do that. It may be just in a  
15 generalized conversation, didn't happen for  
16 anything. I don't know whether even I've done it or  
17 not. I'm not sure. I don't know. It would have to  
18 be put in context for me to say that I did supply or  
19 have this.

20 Q. All right. Let's go through where  
21 somebody -- so your testimony is you don't know who  
22 wrote start date with these arrows on here, and who  
23 drew the boxes around it, or who highlighted the  
24 finish date of December 22, 2020? You don't know  
25 who did that?



1           A.       I'm not sure who did it, no. Again, it  
2 could be one of anybody. But I would need to put in  
3 context. I don't ever remember doing something like  
4 that.

5           Q.       Okay. And when you say it could be one  
6 of anybody, do you have in mind any other people who  
7 would have, based on your conversation and your  
8 involvement in this project, who may have prepared  
9 this schedule with this overlay on it?

10          A.       If you -- you said that it was in Joey's  
11 documents, correct?

12          Q.       Yes. It was produced --

13          A.       So if you show me, you know, what it came  
14 with, or is it just there?

15          Q.       Okay. I will -- since we're going to  
16 resume tomorrow, I will look for the context to see  
17 if that might help jog your memory.

18          A.       Yeah. I'm not sure that the context I  
19 could tell you if it was me or somebody.

20          Q.       Okay. You're not saying it wasn't you,  
21 you're saying you don't know?

22          A.       I don't know.

23          Q.       Okay. And so let's look at this first  
24 page, which, again is Eaux-Odom 406. And it has --  
25 somebody's written on here start date. And for this

1 exterior system long lead time, they have a start  
2 date of October 6, 2020 which, of course, that was  
3 prior to Encore being licensed, so that's not a  
4 feasible start date for any Encore work, correct?

5 A. This could be one of the hedges that I  
6 was doing for the owner as far as the actual outline  
7 of the schedule. Again, I made a -- I made a --  
8 probably in e-mails. So you'll probably see the  
9 date. It probably involves, as well, stating  
10 whenever I may have submitted a schedule to him.  
11 Because they were asking for schedules to give to  
12 DHS or GSA.

13 Q. Okay. And you were just now talking  
14 about Joey Odom, as far as giving Joey Odom a  
15 schedule?

16 A. Yes.

17 Q. Okay.

18 A. It was to give to DHS because they were  
19 asking for it.

20 Q. Right. Did you use the word hedge,  
21 hedging?

22 A. Yes, I was hedging.

23 Q. And what does that mean exactly?

24 A. Again, I was hedging the relationship for  
25 the owner to GSA essentially. Because of the

1 attention that was -- or the new contract that they  
2 were possibly going to sign for the lease renewal.

3 Q. Okay. What was the purpose of the  
4 hedging?

5 A. To let the tenant know that Joey was on  
6 top of it.

7 Q. On top of getting the repairs done?

8 A. Correct.

9 Q. Okay. So let's just go through these  
10 dates. The dates that are pointed out of October 6,  
11 October 6, September 30, October 2, September 29,  
12 October 2, all of these are prior to -- and in fact,  
13 let's go ahead and look at the September 29,  
14 October 5, October 12 --

15 A. That was before I was even -- you know  
16 that was -- October 12 was during Hurricane Delta,  
17 so --

18 Q. So I apologize, Mr. Monheiser. This is  
19 one of those situations where your voice became  
20 slightly garbled, so I couldn't understand. I think  
21 you were speaking clearly, I really just think  
22 it's -- sometimes it's our connection. So I didn't  
23 hear what you just said.

24 A. I said October was Hurricane Delta, I  
25 think, in October. So, I mean, that looks like a

1 really old schedule. That looks like a preliminary  
2 schedule that you're -- that you're using. It looks  
3 like something I would give if somebody was asking  
4 me what a schedule would look like. Which this is  
5 kind of what happened quite a bit, that, you know,  
6 hey, this is what a schedule looks like.

7 Q. Okay. But you agree that with all of  
8 these dates that have the red arrow start dates by  
9 it, being before Encore was even licensed, that  
10 these were not feasible or accurate?

11 A. The whole schedule is not accurate.

12 Q. Right.

13 A. There's nothing in that schedule that --  
14 I mean, there's no specifics, there's no -- there's  
15 really nothing there. It's just -- it's a template  
16 that you put in a start and an end date into.

17 Q. Okay. And in fact, there was a legal  
18 prohibition against Encore even doing this work. So  
19 this was not an accurate representation of any type  
20 of starting the work. And therefore, this date of  
21 obtaining certificate of occupancy by December 22  
22 was also not an accurate representation of an  
23 achievable certificate of occupancy, right?

24 A. No. Because that schedule is irrelevant.  
25 There was nothing -- there is no -- it's a templated

1 schedule. It's premade. We put dates in and it  
2 just automatically fills out based upon an average.  
3 So, I mean, it's -- that whole schedule is  
4 irrelevant.

5 Q. Okay.

6 A. It's a -- again, it's just a -- it's an  
7 example of a schedule. So, I mean, it's not -- it's  
8 not something that -- depending on when you have it.  
9 You known, show me when it was sent, and you can see  
10 if it's legitimate or not.

11 Q. And based on that, your testimony that  
12 it's irrelevant, you would agree that this  
13 certainly -- this schedule should not be presented  
14 to the insurance company, to the owner's insurance  
15 company, as a representation of the complete --

16 A. I don't make the decisions.

17 Q. -- that the owner had hoped for, right?

18 A. I don't make those decisions.

19 Q. You would agree with me that this  
20 schedule, based on what you just said, should not be  
21 presented to the insurance company as a schedule  
22 that the owner was claiming was achievable?

23 A. Again, depending on the time frame  
24 that -- that you're stating. That schedule itself  
25 is not sought out. It does not look like there's --

1 you know all of these grouped items that are grouped  
2 together with no separations, all this stuff, again,  
3 you know. But the end date could be relevant, so --  
4 but the schedule itself is not -- not relevant.

5 Q. You're saying that the end date can be  
6 relevant if the start dates were not achievable?

7 A. Then none of these start dates -- like,  
8 this whole schedule, you know, may not have any  
9 relevance to what -- to anything. But certain dates  
10 may have actually worked out or whenever it was.  
11 Again, it's a preliminary schedule to what it looks  
12 like. So I'm not going to say -- I don't know  
13 the -- some of the dates, I mean, December 22 looked  
14 early, a little early. But it's like -- it  
15 doesn't -- that schedule doesn't add up.

16 Q. The way a schedule works is your output  
17 is based on input. And if you put in inaccurate  
18 input start dates, then it follows that the output,  
19 i.e the completion date, is not correct, right?

20 A. Yes.

21 Q. And if Joey Odom, or anyone with Skyline,  
22 had asked you if they could use this schedule to  
23 submit to the insurance company to represent what  
24 they thought was a feasible completion date, you  
25 would not have advised them to do that, right? You

1 would have told them --

2 A. I would have say that that would be a  
3 feasible completion date. But I would not have said  
4 that to the whole schedule.

5 Q. I'm sorry. Again, just because we're  
6 long-distance, I didn't hear what you said.

7 A. I would not -- I'm sorry. I would not  
8 say that this -- that the end date that is on there,  
9 the completion date is -- I would say that that is  
10 feasible. But the individual items, I couldn't  
11 speak to. But, yes, that -- that end date was  
12 feasible at that point.

13 Q. So you're saying that December 22 is a  
14 feasible finish date --

15 A. At the point that I sent it. Again,  
16 depending how -- that looks, you know, maybe eight  
17 days off. So, yeah. I mean, again, I don't know  
18 whenever -- if I sent this, or if it was what. But  
19 again, that date looks correct, or around that point  
20 that final of my original estimates.

21 Q. I'm sorry that I have to ask you to do  
22 this, because it's really not good that I sometimes  
23 can't hear the words.

24 Are you saying that this December 22,  
25 2020, finish date is feasible?

1 A. Was feasible, yes.

2 Q. Was feasible with these start dates?

3 A. And the start dates may not be relevant.

4 But that date, I'm stating that the dates before  
5 this are -- I don't know. But that the end date was  
6 feasible at that point.

7 Q. And you consider it feasible -- are you  
8 assuming that Encore was not going to break the law  
9 by entering into a contract or starting --

10 A. Yes, 100 percent.

11 Q. All right. So if on November 19, that's  
12 when you actually can bid the job legally --

13 A. Right.

14 Q. -- to contract for the job, and start the  
15 work. Are you saying that in one month the work  
16 could be done, that was feasible?

17 A. Feasible. The -- again, the end date for  
18 the first four may not be feasible for the entire --  
19 the entire -- what do you call it -- the entire --

20 Q. \$1.36 million scope?

21 A. -- the entire building. It may be  
22 adequate for the first floor. And again, at that  
23 time whenever this looks like it was created, we  
24 weren't really sure about our -- the -- our  
25 licensing, and when we were going to get that.



1 Sometimes those things take some, you know, a little  
2 bit of time, sometimes they take a longer time. So  
3 again, I'm not really sure.

4 But in October, yeah, I mean, it was  
5 feasible, depending on whenever I made that  
6 schedule. But this -- again, I'm just looking at  
7 the finish date. That's all I'm looking at. I'm  
8 not looking at anything beforehand. Finish date for  
9 the first floor referencing possibility yes.

10 Q. Okay. Now take this same schedule, and  
11 knowing that Encore wasn't licensed until  
12 November 19, and go in and change the start dates to  
13 legal start dates, that bumps this finish date back  
14 past December 22, right?

15 A. Yes.

16 Q. Okay. Any idea what that would be, if  
17 you go in and modify the input --

18 A. Into this schedule?

19 Q. Yes.

20 A. I'm not -- I can't use the schedule. I  
21 mean, when was the schedule made? You're using a  
22 schedule, you know, that is not -- this is pretty  
23 much irrelevant. And, you know, I don't think that  
24 that schedule should be used at any point. I would  
25 say that the more accurate schedule to use would be

1 91.

2 Q. Okay. And I understand and appreciate  
3 your comment. But I'm actually not asking the  
4 question for the purpose of -- probably that you  
5 think I am as far as what were the actual time  
6 frames and actual completion dates of things. What  
7 I'm asking about is, at this point in time, when  
8 this document was prepared, that's Eaux-Odom 406  
9 through 6.02. And I understand your testimony is,  
10 you may or not have prepared it, you don't know.  
11 What I'm asking, and I think you have answered it,  
12 is that if you go in and change the dates, the start  
13 dates, such that you are not doing any construction  
14 prior to Encore obtaining its license, that would  
15 bump this December 22 date necessarily, because you  
16 have changed the input, right?

17 A. You would have to know -- I would have to  
18 know when that was sent. I understand what you're  
19 saying. But again, like, you know, making a rough  
20 schedule for somebody is totally different than, you  
21 know -- I mean, and using it. Again whenever you  
22 start something off, it may be a goal. And we  
23 weren't sure of exactly whenever our license would  
24 be stated in. So hypothetically speaking, yeah,  
25 this -- if you move the dates to where it was, it

1 would change. But is this relevant to this schedule  
2 that is -- that would be -- that I probably spent  
3 most of my time on, no, it's not the same.

4 Q. And I understand your answer. And you  
5 have to bear with me on this. Because I think  
6 what's happening is, you are anticipating or trying  
7 to help me out maybe too much and anticipating to  
8 much. You're reading too much into my question. So  
9 I'm going to ask my question again, and try not to  
10 overthink it. If my question is clear, just answer  
11 my question, okay.

12 So Encore was certainly not going to  
13 start doing any work prior to getting its license on  
14 November 19, you've already said that, correct?

15 A. Yeah.

16 Q. All right. So if you go in, take this  
17 particular schedule at this point in time, and you  
18 modify it by putting in start dates that are not  
19 prior to November 19, but are, in fact, after it,  
20 then using this exact same schedule, but just  
21 changing the inputs, this finish date would  
22 necessarily be bumped back. It would no longer be  
23 December 22, correct?

24 A. I mean, that's obvious.

25 Q. Okay. And that's what I thought. Okay.

1 Very good. And have you ever -- have you ever  
2 testified in court?

3 A. No.

4 Q. Have you ever served as a scheduling  
5 expert, or a consultant on any project?

6 A. No.

7 Q. Have you taken any courses or training in  
8 construction scheduling?

9 A. No.

10 Q. How did you learn how to create this  
11 Microsoft -- I forgot the name of it, Microsoft --  
12 the program that you use for scheduling, what's it  
13 called?

14 A. Projects.

15 Q. Projects. How did you learn how to use  
16 Microsoft Projects?

17 A. Self-taught.

18 Q. Okay. You googled it, read a tutorial on  
19 it, or what?

20 A. No. It was -- it's fairly  
21 straightforward. All this stuff is fairly  
22 straightforward. You put in two dates, and you can  
23 either edit a schedule, or you can edit an editable  
24 schedule, or I believe there's another selection to  
25 automatically schedule it. It's not difficult to --

1 to use at all. Some of the other components are  
2 very complicated, but I don't use those. I just use  
3 the bar graph essentially.

4 Q. All right. And how long have you been  
5 using this particular software for scheduling?

6 A. Oh, two years probably.

7 Q. Okay. And before that what did you use,  
8 or did you do any scheduling?

9 A. I used a bar graph. It just was a -- it  
10 was on -- I actually used it on an iPad. It was  
11 quite a bit easier.

12 Q. Okay. Have you ever done a critical path  
13 analysis?

14 A. I was a tradesman. I think that's about  
15 as good of analysis that you can. I know the time  
16 it takes to do trades. I have worked as a lot of  
17 trades. I worked for a lot of tradesmen. I've done  
18 a lot of trades myself. So, I mean, I'm aware of  
19 the timing that it should take for certain items to  
20 be completed.

21 Q. Okay. Have you been asked to do any type  
22 of delay analysis, or critical path analysis, for  
23 this particular project?

24 A. No. I don't know what -- I don't know  
25 what you mean by that.

1 Q. Okay.

2 A. They hired me to -- Joey hired me to  
3 build the building. And that's -- I assisted in the  
4 other areas providing costs where I could. I mean,  
5 I don't really remember exactly doing an analysis  
6 for anything.

7 Q. All right. So if I asked you to tell me  
8 the number of days of delay -- delay in completion  
9 of this project at any particular time on the  
10 schedule by any cause, you wouldn't be able to say  
11 how many days of delay was associated with a  
12 particular, you know --

13 A. Oh, yes. Okay. I'm sorry. I thought  
14 you were asking if somebody has actually asked me to  
15 do a delay. I mean, I've got days for, you know,  
16 some items being delayed due to -- mostly exterior  
17 stuff due to weather, interior stuff due to weather.

18 Q. Okay. And so you understand that there  
19 is concurrent delays, so you might have a delay in  
20 obtaining the engineering plans, and a delay in  
21 owners approval and selection of material, so that  
22 you can't actually order something. Or you could  
23 have a backlog on materials, and the backlog might  
24 be three days, or three weeks, but there are  
25 concurrent delays. So you have to actually analyze

1 all the delays to figure out which ones impacted the  
2 critical path, meaning extended the duration of the  
3 project a number of days. Do you understand --

4 A. Yeah, I understand that. But the  
5 critical path, none of that was relevant because of  
6 the critical path. I mean, it simply was a delay  
7 from the start. So, you know, there is not --  
8 you're not -- anything after that contract was  
9 signed, is, I mean, almost irrelevant. Because, I  
10 mean, you were delayed at that point.

11 Q. Are you saying that you were not keeping  
12 up and tracking all the delays and impacts to the  
13 critical path, if it wasn't relevant to anything?

14 A. It's irrelevant to me in my contracts  
15 with my subcontractors. It didn't have very much to  
16 do with my subcontractors or, you know, guys being  
17 on site, no. But I'm sure that there is relevance  
18 in those other delays.

19 Q. Do you consider your schedules to be an  
20 accurate reflection of all of the impacts and all  
21 the delays in this project? Were you keeping --

22 A. I don't like to use the word plural that  
23 you used, schedules. I would say schedule would be  
24 a decent one.

25 Q. Okay.

1 A. Yeah.

2 Q. You were keeping track of the impacts and  
3 delays in your schedule? You were updating those?

4 A. Yes. Dependent -- depending on what it  
5 was, and when it was, and when I started keeping  
6 track of those. I mean, sometimes I wouldn't,  
7 sometimes I would.

8 Q. There was no work stoppage because of any  
9 funding issues, right?

10 A. Yes. There was work that didn't start  
11 because of funding issues.

12 Q. So are you calling that a work stoppage?  
13 Or what work are you referring to that didn't start?

14 A. The fact that the contract wasn't signed  
15 until December 25. You have read my logs. I was  
16 fairly specific, I feel like, on some of these items  
17 where I can't -- I have had discussions with the  
18 owner. I mean, the owner didn't want to sign a  
19 contract, if he didn't know if money was coming in.  
20 And so --

21 Q. Just a minute. You said December 25, is  
22 actually the date --

23 A. I'm sorry, 20th. Yeah, I apologize.

24 Q. And the contract actually has built in a  
25 start date of November 24, correct?



1           A.       I mean, a rough -- yeah, a rough -- a  
2 rough start date.

3           Q.       Which, as we've already said, was a  
4 couple of days after Encore became licensed, right?

5           A.       Yes.

6           Q.       Okay.

7           A.       I didn't start work technically until --  
8 really start work until the -- I guess you could say  
9 mid December because of delays. I mean, we started  
10 doing work on exterior work before the contract was  
11 signed. It was -- we were taking siding. Because I  
12 was trying to stay on, trying to just bear every  
13 single bit of Path A that I could bear.

14                   And so I wish that would -- I think I was  
15 in first contact with Associated Waterproofing  
16 around, like, November 13. You know, I really  
17 wanted them to get started, you know, around that  
18 last week of November, but they couldn't. And so  
19 just because we couldn't -- we didn't know prices.  
20 We didn't have -- I didn't have anything worked out  
21 with the owner at that point. Him and I did have a  
22 small conversation about me getting the exterior  
23 dried in to stop damage to the building.

24                   And then -- so, I mean, if he would have  
25 signed that contract on the 24th, if he had funding,

1 yes, this thing would have been -- been a lot better  
2 off. But he did not. And I think that reflects in  
3 my notes.

4 Q. Mr. Monheiser, so there's a lot of stuff,  
5 again, that you said that either cut out or  
6 something. But you said, if the owner had signed  
7 the contract on November 24, is that what you said?

8 A. Whenever he had -- if he had funding, he  
9 would have signed it on November 24.

10 Q. But the contract when it was signed said  
11 that you have been told to start on November 24,  
12 right?

13 A. Yes.

14 Q. You got the go-ahead to start on November  
15 24?

16 A. Yes.

17 Q. Okay.

18 MS. WOLF: I'm at a point now where  
19 the next place I'm going to go is the  
20 daily logs. And, you know, I think it's  
21 better, Michael, if we are going to have  
22 to stop now, or in a few minutes, if I  
23 don't even start the daily logs.

24 MR. COX: Okay.

25 MS. WOLF: I think I can move through

1           them faster, you know, if we just start  
2           fresh in the morning. Do I have any more  
3           time right now, or do we need to stop?

4           MR. COX: I need to stop.

5           MS. WOLF: Okay. Ms. Villien, do we  
6           know if you can join us tomorrow at around  
7           9:30?

8           COURT REPORTER: I was going to ask  
9           you what time. But, yeah, just tell me  
10          when, and I'll be here.

11          MS. WOLF: Michael, is 9:30 going to  
12          be it, that's the earliest?

13          MR. COX: Yeah, that's about when  
14          I'll be able to start.

15          MS. WOLF: Okay. And if something  
16          happens, Michael, and it's going to be,  
17          you know, more than 10 minutes late, can  
18          you just shoot us an e-mail or something?

19          MR. COX: I won't be late.

20          MS. WOLF: Okay. So tomorrow at  
21          9:30. Ms. Villien, we just need a link,  
22          please.

23          COURT REPORTER: I'm in contact with  
24          Veritext, who y'all had scheduled through,  
25          that's who I'm covering this for, to get

1           them to send the link out.

2           MS. WOLF: Okay. And can you find  
3           out if we can have the videographer for  
4           both, or do I need to do that from my  
5           office?

6           COURT REPORTER: It probably would  
7           not be a bad idea for you to do it also.  
8           I have told my scheduler that they need  
9           two videographers and two of us reporters.  
10          But it doesn't hurt to have it come from  
11          your office also.

12          MS. WOLF: I will do that. And I owe  
13          you that Exhibit 1.

14          THE VIDEOGRAPHER: We're still on the  
15          record. Do you guys want to go off the  
16          record from here on?

17          MS. WOLF: I think we can. Michael,  
18          John, do y'all have anything that needs to  
19          be on the record right now?

20          MR. COX: No, that's fine.

21          THE VIDEOGRAPHER: Going off the  
22          record. The time is 3:18.

23                       (OFF THE RECORD)

24                       (DEPOSITION SUSPENDED)

25

REPORTER'S PAGE

I, Deborah Villien, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(b) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state:

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talk overs; that same is the proper method for a Court Reporter's transcription of proceedings, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with phonetic [ph]; that any non-word sounds or utterances have been denoted with [descriptive sound];

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Deborah Villien, CCR

CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original required seal.

I, Deborah Villien, Certified Court Reporter (License No. 98079) in and for the State of Louisiana, as the officer before whom this video taped testimony was taken remotely via videoconferencing, do hereby certify that EVAN MONHEISER, after having been duly sworn by me upon authority of R.S. 37:2554, did testify on the 5th day of August 2021 as hereinbefore set forth in the foregoing 218 pages; this testimony was reported by me in the stenomask, voice writer, method, was prepared and transcribed by me or under my personal direction and supervision, is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services; that I have acted in compliance with the prohibition on contractual relationships, as defined by LA Code of

1 Civil Procedure Article 1434 and in rules of the  
2 board; that I have no actual knowledge of any  
3 prohibited employment or contractual relationship,  
4 direct or indirect, between a court reporting firm  
5 and any party litigant in this matter, nor is there  
6 any such relationship between myself and a party  
7 litigant in this matter. I am not related to  
8 counsel or to the parties herein, nor am I otherwise  
9 interested in the outcome of this matter.

10 I further certify that before the completion of the  
11 deposition, as defined in Rule 30(e)(2) of the  
12 Federal Rules of Civil Procedure and/or Article 1445  
13 of the Louisiana Code of Civil Procedure the  
14 deponent and/or a party did not request to review  
15 the transcript.

16 August 11, 2021  
17  
18  
19  
20  
21  
22  
23  
24  
25

Index: \$1,359,985.70..accomplish

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